



**THE ATTORNEY GENERAL
OF TEXAS**

August 26, 1988

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Doyce R. Lee, Commissioner
State Board of Insurance
1110 San Jacinto Blvd.
Austin, Texas 78701-1998

Open Records Decision No. 503

Re: Whether information re-
garding the conservatorship and
receivership of a company
investigated by the State Board
of Insurance is protected from
disclosure under the Texas Open
Records Act, article 6252-17a,
V.T.C.S. (RQ-1342)

Dear Mr. Lee:

The State Board of Insurance received a request under the Texas Open Records Act, article 6252-17a, V.T.C.S., for information regarding First Title of Houston (FTH). After the board's investigation of FTH's handling of certain escrow funds, the board requested that the attorney general initiate proceedings to place FTH in receivership. The 200th Judicial District Court of Travis County entered a Temporary Restraining Order and an Order Appointing Temporary Ancillary Receiver on January 22, 1986. Six days later, FTH consented to the appointment of a conservator and the case was non-suited. On December 23, 1986, the court entered an Order Granting Final Report and Application to Close Receivership, formally closing the receivership and releasing the Temporary Ancillary Receiver appointed in January of 1986. Although the order formally closing the receivership was not entered until December, the order expressly recognized that the receiver actually served for only five days in January 1986. On October 9, 1987, a member of the public made a request to the board for information regarding the board's investigation and actions regarding the receivership and conservatorship of FTH.

Under the Open Records Act, all information held by governmental bodies is public unless the information falls within at least one of the act's specific exceptions to disclosure. Attorney General Opinion JM-672 (1987). You claim that sections 3(a)(7), 3(a)(11) and a specific statute make confidential information relating to the

conservatorship of insurance companies. Section 3(a)(1) of the Open Records Act protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision."

The 70th Legislature added section 3A to article 21.28-A of the Texas Insurance Code. Acts 1987, 70th Leg., ch. 1073, § 34. Section 3A provides:

(a) Notwithstanding any other provision of law, hearings, orders, notices, correspondence, reports, records, and other information in the possession of the State Board of Insurance relating to the supervision or conservatorship of any insurance company are confidential except as provided by this section.

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This section does not apply to information
(1) if the insureds of the insurance company are not protected by Article 9.48, 21.28-C, or 21.28-D of this code or by statutes substantially similar to those Articles, or
(2) on the appointment of a receiver for the insurance company by a court of competent jurisdiction. (Emphasis added.)

No open records decisions interpret this new provision. You ask only about subpart (2); we assume that subpart (1) does not apply.

Section 3A provides confidentiality within the meaning of section 3(a)(1) of the Open Records Act. The protection of section 3A is broad, extending to "hearings, orders, notices, correspondence, reports, records, and other information." The information submitted by the board for review clearly falls within the protection of section 3A and therefore within section 3(a)(1) of the Open Records Act.

You note, however, that section 3A "does not apply to information. . . on the appointment of a receiver for the insurance company by a court of competent jurisdiction." It has been suggested that, since proceedings were initiated to place FTH in receivership, the information at issue falls within this exception to protection under section 3A and must be released. The case was, however, non-suited. The court appointed a temporary receiver who served for only five days until FTH consented to the establishment of a

conservatorship. The "receivership" ended on January 28, 1986. It "formally" ended on December 23, 1986. Under the facts presented, this "receivership" did not trigger the receivership exception for protection under section 3A(a). The request for information was made on October 9, 1987. This is not a case in which information was requested during a period during which a receivership was arguably in effect. Consequently, section 3A of article 21.28-A of the Insurance Code, in conjunction with section 3(a)(1) of the Open Records Act, protects the information at issue from disclosure.

The information at issue should be released only as provided under section 3A. Subsection (e) of section 3A expressly authorizes the board to open the information at issue to the public if the board deems it in the best interest of the public or the insurer to do so. Once the board exercises its discretion to release information to one member of the public, however, it must release the information to any member of the public who requests it. See V.T.C.S. art. 6252-17a, § 14(a).

S U M M A R Y

Section 3A of article 21.28-A of the Texas Insurance Code, in conjunction with section 3(a)(1) of the Texas Open Records Act, article 6252-17a, V.T.C.S., protects from required disclosure "hearings, orders, notices, correspondence, reports, records, and other information in the possession of the State Board of Insurance relating to the supervision or conservatorship of any insurance company." This protection does not apply on the appointment of a receiver for the insurance company. The facts presented, i.e., when proceedings were initiated to establish a temporary "receivership" and were later non-suited, did not trigger the receivership exception for protection under section 3A(a).

Very truly yours,



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